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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/042,861	01/09/2002	Frank Peters	Mohawk 5	5321
6980	7590	03/31/2004	EXAMINER	
TROUTMAN SANDERS LLP BANK OF AMERICA PLAZA, SUITE 5200 600 PEACHTREE STREET, NE ATLANTA, GA 30308-2216			EINSMANN, MARGARET V	
			ART UNIT	PAPER NUMBER
			1751	
DATE MAILED: 03/31/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/042,861

Applicant(s)

PETERS ET AL.

Examiner

Margaret Einsmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 13-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 13-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Applicant's amendment has been entered and applicant's remarks carefully considered. All previously pending claims have been canceled. The currently pending claims are claims 13-25. Applicant's amendment has mooted the 102(b) rejection of claims 1-4,6,7,10-12 as being anticipated by Cordick as applied in the previous rejection but has resulted in the following new grounds of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 13-25 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has added 13 new claims without pointing out basis for the new claims except to state that the basis for the limitation "in a solution of between 2% to 4% binder" is on page 14. The examiner cannot find basis for said limitation on page 14. However, on page 13 there is the statement, "when a hydrocarbon known as PM3180, provided by 3M Corporation of St. Paul Minnesota, was utilized, **the odor treatment agent** consisted of 2 to 4% of the odor treatment solution,..." The top of page 12, lines 3 and 4 states, "hereinafter, **the**

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bacteria spore blend and bacteria spore blend binder are referred to as an odor treatment agent." Accordingly, both the bacteria spore blend and the bacteria spore binder consisted of 2-4% of the odor treatment solution. That is, the combination of the two, not the binder alone as now presently claimed. Also, that section of the specification only gives for the binder being a hydrocarbon. Applicant now claims that limitation for the binder which is a hydrocarbon or a fluorocarbon. Where is the basis for the binder being a fluorocarbon? The basis is fluorochemical. See page 9 last paragraph.

Appropriate correction is required.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no statement in the independent claims as to the amount of the active component, the spore blend, nor is there any indication of what comprises the main portion of the solution (96-98%). The only percentage claimed is the binder, which is an inert ingredient.

In claim 22 the odor control solution is further diluted. Since we do not know how much of the spore blend is in the original odor control solution, we cannot know how much is in the diluted solution. In claim 22, we know neither what the major part of the odor control solution comprises or what the diluent is. There is no way one can know

how much spore blend, the active ingredient, is contained in the diluted solution used in the process of claim 22.

Claim Objections

Claims 20,21,23 and 24 are objected to because of the following informalities:
There needs to be a modifier before "hydrocarbons" or "fluorocarbons" on line 1 of each of the above claims. For example, "a mixture of" or "one or more."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cordick et al. Cordick et al. teach a process of treating carpet fibers with a bacteria spore blend to prevent odor. See figure (1B) and page 5 lines 31-35. Noting example 1 on pages 14 and 15, patentee is treating carpet fibers with the same spore blend as applicant discloses on page 8, in an aqueous solution of a fluorochemical, which is applied from an aerosol container and then dried in a humidity control zone. The examiner takes official notice that lower hydrocarbons are conventionally used as propellants for aerosol containers. Accordingly the composition contains hydrocarbons and fluorochemicals. Regarding the limitation of claim 7, the fluorochemical component

is contained in the solution in an amount of 0.1 to 20 wt%. See col 10 lines 23-38.

Regarding claim 15, patentee states at page 13 line 19 et seq. that the agent may be applied to installed carpet, which, of course, has already been dyed. Regarding the limitation of pH as claimed, that is inherent since patentee is using the exact same composition as applicant, and has not added any acid or base, making the composition essentially neutral.

Cordick does not state the quantity of spore blend on the carpet or the wet add on amount of the odor treatment solution. Patentee describes the treatment amount as spores per gram of carpet, and does not describe the amount of fluorochemical in terms of odor treatment solution. It would have been obvious to the person having skill in the art that the amount of composition patentee applies is equivalent for its intended purpose, which is the same as applicant's purpose, since his results indicate that the application of the spore blend in the amounts patentee uses are sufficient to provide removal of potentially odor causing organic material, which is equivalent to the process applicant claims, absent evidence to the contrary. Additionally applicant states at page 9 lines 17-21 that the most effective amount is 10^7 cells per gram of fiber weight, which is the same amount as claimed by patentee in claim 16, giving more evidence that the processes are equivalent.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In this claim, what is the "wet add on" amount based on?

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 571-272-1314. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0994.

March 25, 2004


Margaret Einsmann
Primary Examiner
Art Unit 1751